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VEGNESH RAMNAIDU v. KETUA POLIS NEGARA, MALAYSIA & ANOR

HIGH COURT MALAYA, IPOH
SU TIANG JOO JC
[CRIMINAL APPLICATION NO: AA-44-34-07-2022]
28 OCTOBER 2022

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Abstract – *The inference to be drawn from the provisions of s. 3 of the Dangerous Drugs (Special Preventive Measures) Act 1985 ('DDSPMA') is clear. Parliament acknowledges the drastic power given to restrict the liberty of a subject without having to bring him to court and has put in place safeguards by expressly providing that this power or arrest is placed in the hands of a police officer with the rank of at least that of an inspector, and authority for each incremental period of detention having to be sought from a correspondingly higher authority up till that of the Minister. Each sequential progression must be scrupulously complied with by those entrusted with such power and the exercise of this power within the framework of the preventive detention laws housed within the DDSPMA is objectively justiciable. In the instant case, whilst the element of having associated or is being involved in trafficking in dangerous drugs activities together with a substantial body of persons was present for the applicant's further detention, this element for purposes of his arrest, as well as his subsequent detention for more than 24 hours, followed by a further 48 hours was noticeably absent. It followed that his arrest and his subsequent detention was unlawful.*

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CRIMINAL PROCEDURE: *Habeas corpus – Application for – Whether applicant arrested and detained by reason of him having associated or being involved in trafficking in dangerous drugs activities together with substantial body of persons – Whether there was evidence laid before court – Structure of legal detentive power – Whether elements of purpose of arrest and subsequent detention noticeably absent – Whether detention lawful – Whether writ of habeas corpus ought to be issued in applicant's favour – Dangerous Drugs (Special Preventive Measures) Act 1985, ss. 3(1), 3(2)(a) and (b)*

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PREVENTIVE DETENTION: *Detention order – Habeas corpus – Application for – Whether applicant arrested and detained by reason of him having associated or being involved in trafficking in dangerous drugs activities together with substantial body of persons – Whether there was evidence laid before court – Structure of legal detentive power – Whether elements of purpose of arrest and subsequent detention*

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noticeably absent – Whether detention lawful – Whether writ of habeas corpus ought to be issued in applicant's favour – Dangerous Drugs (Special Preventive Measures) Act 1985, ss. 3(1), 3(2) (a) and (b)

The applicant moved the court by notice of motion for a writ of *habeas corpus* to be released from detention with immediate effect. The applicant was arrested by ASP Sagaran on 23 June 2022 pursuant to s. 3(1) of the Dangerous Drugs (Special Preventive Measures) Act 1985 ('DDSPMA') because he had reason to believe there were grounds for his detention under s. 6(1) of the DDSPMA as the applicant had been or was associated with an activity relating to or involving trafficking in dangerous drugs and that in the interest of public order, he be detained. On 24 June 2022, acting pursuant to s. 3(2)(a) of the DDSPMA, authority was given by Inspector Vijay to have the applicant detained beyond 24 hours. According to the investigating officer, IO Inspector Tie, on the following day, 25 June 2022, authority was given by ASP Sagaran pursuant to s. 3(2)(b) of the DDSPMA for the purpose of detaining the applicant beyond 48 hours. IO Inspector Tie found that, *inter alia*, the applicant had been involved in the trafficking of dangerous drugs namely syabu containing methamphetamine, a scheduled dangerous drug and that he was involved with a substantial body of persons in his role as a person who recruited members in trafficking dangerous drugs. IO Inspector Tie reported the arrest and detention of the applicant to DSP Nazeri for purposes of detaining the applicant for a period of more than 14 days. DSP Nazeri, having studied the applicant's file, was satisfied those investigations under s. 3(1) of the DDSPMA had yet to be completed and thus the detention of the applicant had to be extended for a period beyond 14 days. Thus, on 1 July 2022, DSP Nazeri reported to ACP Shahidi on the arrest and detention of the applicant. ACP Shahidi, after studying the report, was satisfied that there were reasonable grounds for believing that there were grounds for the applicant to be detained pursuant to s. 6(1) of the DDSPMA because the applicant together with a substantial body of persons had been associated with an activity relating to or involving trafficking in dangerous drugs as defined in s. 2 of the Dangerous Drugs Act 1952. Thereafter, on 4 July 2022, ACP Shahidi prepared a report on the arrest and detention of the applicant and reported to the Minister of Home Affairs for purposes of extending the detention of the applicant for 14 days in compliance with the provisions of s. 3(2)(c) of the DDSPMA. On 12 July 2022, inquiry officer Ashwini received the complete report pursuant to s. 3(3) of the DDSPMA that was prepared by IO Inspector Tie which included statements recorded from witnesses including the applicant and from her investigations, she was satisfied that the applicant did not carry out the trafficking of dangerous drugs alone but as part of a substantial body of persons as provided under art. 149 of the Federal Constitution ('FC') and the preamble of the DDSPMA. The applicant raised these issues in support of his application (i) there was non-compliance with the provisions of s. 3(1) of the DDSPMA and art. 5(2)

of the FC read together with the preamble of the DDSPMA and art. 149 of the FC – the arrest of the applicant was not premised on any belief that 'the applicant's activities' involved a 'substantial body of persons'', (ii) there was non-compliance with the provisions of s. 3(2)(a) of the DDSPMA read together with the preamble of the DDSPMA and art. 149 of the FC; (iii) there was non-compliance with s. 3(2)(b) of the DDSPMA read together with the preamble of the DDSPMA and art. 149 of the FC; and (iv) the investigations and report submitted by IO Inspector Tie under s. 3(3) of the DDSPMA were incomplete and were not in accordance with the requirements of the DDSPMA.

Held (allowing application):

(1) For purposes of s. 3(1), 3(2) (a) and (b) of the DDSPMA, in any arrest and subsequent detention, two of the three key ingredients identified and held by the Federal Court in the case of *Selva Vinayagam Sures v. Timbalan Menteri Dalam Negeri, Malaysia & Ors* namely that (i) the activity which has been taken or is being threatened by a substantial body of persons relating to or involving trafficking in dangerous drugs; and (ii) the suspect is a member of a substantial body of persons, from part of the object of the DDSPMA and should be read into s. 3 of the DDSPMA in order to give it the meaning intended by Parliament. (para 41)

(2) The arrest made under s. 3(1) of the DDSPMA followed by the subsequent detention of more than 24 hours pursuant to s. 3(2) (a) of the DDSPMA and the further detention of more than 48 hours pursuant to s. 3(2)(b) of the DDSPMA were all carried out without any evidence laid before this court that the applicant was arrested and detained by reason of he having associated or was being involved in trafficking in dangerous drugs activities together with a substantial body of persons. The first time, the element of the applicant having associated or was being involved in trafficking in dangerous drugs activities together with a substantial body of persons surfaced only at the stage when the applicant was detained for a further 14 days pursuant to s. 3(2)(c) of the DDSPMA. (paras 46 & 47)

(3) The structure of the legal detentive power in s. 3 of the DDSPMA is expressed to be sequential in nature. It starts with the power given to any police officer of or above the rank of inspector, without warrant, to arrest and detain followed by the legal power to incrementally increase the period of detention being vested upon a correspondingly higher rank of police officer. Only a police officer of or above the rank of inspector can detain the suspect for more than 24 hours. This is followed by only a police officer of or above the rank of Assistant Superintendent of Police who has the authority to have the suspect detained for more than

48 hours. Thereafter, the suspect shall not be detained for more than 14 days unless a police officer of or above the rank of Deputy Superintendent has reported the circumstances of arrest and detention to the Inspector General of Police ('IGP') or to a police officer designated by the IGP who shall forthwith report the same to the Minister. (paras 48-52)

(4) The inference to be drawn from the provisions of s. 3 of the DDSPMA was clear. Parliament acknowledges the drastic power given to restrict the liberty of a subject without having to bring him to a court and has put in place safeguards by expressly providing that this power or arrest is placed in the hands of a police officer with the rank of at least that of an inspector, and authority for each incremental period of detention having to be sought from a correspondingly higher authority up till that of the Minister. Each sequential progression must be scrupulously complied with by those entrusted with such power and the exercise of this power within the framework of the preventive detention laws housed within the DDSPMA is objectively justiciable. (paras 53 & 54)

(5) In the instant case, whilst the element of having associated or is being involved in trafficking in dangerous drugs activities together with a substantial body of persons was present for the applicant's further detention for a further 14 days pursuant to s. 3(2)(c) of the DDSPMA, however, this element for purposes of his arrest, as well as his subsequent detention for more than 24 hours, followed by a further 48 hours was noticeably absent. It followed that his arrest and his subsequent detention was unlawful. There was, therefore, merit in his application for a writ of *habeas corpus* to be issued in his favour. (paras 55 & 56)

Case(s) referred to:

Dhinesh Tanaphll v. Lembaga Pencegahan Jenayah & Ors [2022] 5 CLJ 1 FC ***(refd)***

Ex Parte Johannes Choeldi & Ors [1960] 1 LNS 25 HC ***(refd)***

Kantha Rao Subramaniam lwn. Ketua Polis Negara, Malaysia & Satu Lagi [2022] 1 LNS 1898 HC ***(refd)***

Lee Kew Sang v. Timbalan Menteri Dalam Negeri, Malaysia & Ors [2005] 3 CLJ 914 FC ***(refd)***

Lei Meng v. Inspektor Wayandiana Abdullah & Ors And Other Appeals [2022] 3 CLJ 177 FC ***(refd)***

Mohamad Ezam Mohd Noor v. Ketua Polis Negara & Other Appeals [2002] 4 CLJ 309 FC ***(refd)***

Muhamad Bilal Salim v. Ketua Polis Negara, Malaysia & Anor [2022] 1 LNS 1315 HC ***(refd)***

Muhammad Hafiz Abd Halim v. Ketua Polis Negara, Malaysia & Anor [2022] 1 LNS 1542 HC ***(refd)***

Muhammad Jailani Kasim v. Timbalan Menteri Keselamatan Dalam Negeri, Malaysia & Ors [2006] 4 CLJ 687 FC ***(refd)***

Ng Hong Choon v. Timbalan Menteri Hal Ehwal Dalam Negeri & Anor [1994] 4 CLJ 47 SC ***(refd)***

A *Selva Vinayagam Sures v. Timbalan Menteri Dalam Negeri, Malaysia & Ors [2021] 2 CLJ 29 FC* ***(refd)***

Tee Yam v. Timbalan Menteri, Menteri Keselamatan Dalam Negeri, Malaysia & Ors [2005] 6 CLJ 550 HC ***(refd)***

Zaidi Kanapiah v. ASP Khairul Fairoz Rodzuan & Ors And Other Appeals [2021] 5 CLJ 581 FC ***(refd)***

B **Legislation referred to:**

Dangerous Drugs Act 1952, s. 2

Dangerous Drugs (Special Preventive Measures) Act 1985, s. 3(1), (2)(a), (b), (c), (3), 5(1), (2), (3), (4), 6(1)

Federal Constitution, arts. 5(1), (2), (3), 149

C Interpretation Acts 1948 and 1967, s. 17A

Prevention of Crime Act 1959, s. 3(1)

For the applicant - Danial Amir & Zafran Zafri Mohd Zaini; M/s Zafri & Partners
For the respondents - Nuur Izham Ismail; Legal Advisor Office, Ministry of Home Affairs

Reported by Suhainah Wahiduddin

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JUDGMENT

Su Tiang Joo JC:

Introduction

E **[1]** The applicant moved the court by notice of motion dated 18 July 2020 (encl. 1) for a writ of *habeas corpus* to be released from detention with immediate effect. On 18 October 2022, this court decided to allow his application and these are the grounds for the decision.

Background

F **[2]** I set out below a narrative of the facts distilled from the affidavits filed; one by the applicant (encl. 3) and seven by the respondents (encls. 5, 6, 7, 8, 9, 10 and 11).

[3] The applicant was arrested by ASP V Sagaran a/l Verapatran ("ASP G Sagaran") on 23 June 2022 (encl. 9 para. 4) pursuant to s. 3(1)[1] of the Dangerous Drugs (Special Preventive Measures) Act 1985 ("DDSPMA") because he had reason to believe there are grounds for his detention under s. 6(1)[2] of the DDSPMA as the applicant has been or is associated with an activity relating to or involving trafficking in dangerous drugs and that in the H interest of public order, he be detained. See the notice and grounds of arrest in encl. 3 exh. VR1.

[4] On 24 June 2022, acting pursuant to s. 3(2)(a)[3] of the DDSPMA, authority was given by Inspector of Police Vijay a/l Kumar to have the applicant detained beyond 24 hours (encl. 8 para. 6).

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[5] According to the Investigating Officer, Inspector Tie Ngie Sieng, ("IO Inspector Tie") (encl. 7 para. 5), on the following day, 25 June 2022, authority was given by ASP V Sagaran pursuant to s. 3(2)(b)[4] of the DDSPMA for the purpose of detaining the applicant beyond 48 hours.

[6] IO Inspector Tie deposed on affidavit (encl. 7 para. 7) that he had interviewed witnesses for the applicant's case on 28 June 2022 from 9am to 10am and from 2pm to 3pm as well as on 29 June 2022 from 9am to 10am and he found that:

(i) the applicant had been involved in the trafficking of dangerous drugs namely syabu containing methamphetamine, a scheduled dangerous drug;

(ii) the applicant is involved with a substantial body of persons in his role as a person who recruits members in trafficking dangerous drugs (syabu) containing methamphetamine around Hutan Melintang, Perak;

(iii) the applicant plans the distribution of dangerous drugs to foreign workers working as fishermen in Hutan Melintang, Perak; and

(iv) the applicant acts as the head of the syndicate where he is the individual that sets the price for each drug sold with each transaction with customers arranged by him, and he is paying the members of his group recruited for purposes of trafficking in syabu containing methamphetamine.

[7] IO Inspector Tie gave a detailed account of the work carried out by him from 23 June 2022 up until when he completed his investigations and report on 12 July 2022 (encl. 7) pursuant to s. 3(3)[5] of the DDSPMA. In between, he had reported the arrest and detention of the applicant to DSP Ahmad Nazeri bin Wahid ("DSP Nazeri") for purposes of detaining the applicant for a period of more than 14 days.

[8] DSP Nazeri in his affidavit (encl. 10 para. 4) confirmed having received the report from IO Inspector Tie on 1 July 2022 and that he studied the applicant's file containing documents, intelligence reports and recorded statements in connection with the applicant's activity in association with trafficking in dangerous drugs as defined in s. 2 of the Dangerous Drugs Act 1952[6]. From his review, he was satisfied those investigations under s. 3(1) of the DDSPMA has yet to be completed and thus the detention of the applicant has to be extended for a period beyond 14 days (encl. 10 para. 5).

[9] Thus, on 1 July 2022, DSP Nazeri reported to ACP Shahidi bin Abdullah ("ACP Shahidi") on the arrest and detention of the applicant.

[10] ACP Shahidi in his affidavit confirmed receipt of the report from DSP Nazeri (encl. 5 para. 5) on 1 July 2022. After studying this report, he was satisfied that there are reasonable grounds for believing that there are grounds

for the applicant to be detained pursuant to s. 6(1) of the DDSPMA because the applicant together with a substantial body of persons has been associated with an activity relating to or involving trafficking in dangerous drugs as defined in s. 2 of the Dangerous Drugs Act 1952.

[11] Thereafter, on 4 July 2022, ACP Shahidi prepared a report on the arrest and detention of the applicant and reported to the Minister of Home Affairs for purposes of extending the detention of the applicant for 14 days in compliance with the provisions of s. 3(2)(c)[7] of the DDSPMA (encl. 5 para. 7).

[12] Continuing with the narrative, on 12 July 2022, Ashwini a/p Apalasamy ("inquiry officer Ashwini") in her affidavit (encl. 6) deposed that she is the Inquiry Officer and that on 12 July 2022, she received the complete report pursuant to s. 3(3) of the DDSPMA that was prepared by IO Inspector Tie which included statements recorded from witnesses including the applicant.

[13] In her affidavit, inquiry officer Ashwini gave a detailed daily account of her investigations commencing from her receiving the report and studying the same on 12 July 2022 (encl. 6 para. 11).

[14] On 13 July 2022, she carried out investigations including interviewing witnesses detained under the DDSPMA *via* video (encl. 6 para. 11(f) ii) and she averred:

> Saya juga telah meneliti dan mengkaji fail kes Pemohon dan maklumat keterangan-keterangan yang relevan bagi maksud **mengenal pasti penglibatan Pemohon dalam aktiviti pengedaran dadah dan penglibatan Pemohon dalam sekumpulan besar orang.** (emphasis added)

[15] To her credit, inquiry officer Ashwini worked daily on this matter involving the applicant including 16 July 2022 (Saturday) where she had to travel to Penang and 17 July 2022 which was a Sunday, to trace witnesses before completing and presenting her report on 18 July 2022 pursuant to s. 5(4)[8] of the DDSPMA to the second respondent.

[16] In para. 13 of her affidavit (encl. 6), inquiry officer Ashwini deposed *inter alia* the following, which is material to the application under consideration by this court:

> Saya sesungguhnya menegaskan bahawa setelah meneliti hasil siasat yang telah dijalankan terhadap Pemohon dan saksi serta meneliti dan menimbangkan laporan lengkap penyiasatan di bawah Seksyen 3(3) Akta tersebut yang dikemukakan oleh INSPEKTOR POLIS TIE NGIE SENG berkaitan dengan aktiviti-aktiviti Pemohon yang berhubungan dengan atau yang melibatkan pengedaran dadah Berbahaya, saya telah menyediakan satu laporan bertulis terhadap Pemohon untuk dikemukakan kepada Menteri Dalam Negeri di bawah Seksyen 5(4) Akta

tersebut. Saya telah berpuas hati bahawa terdapat alasan-alasan yang munasabah untuk mempercayai bahawa Pemohon pernah ada kaitan dengan aktiviti yang berhubungan dengan atau yang melibatkan pengedaran dadah berbahaya seperti yang ditakrifkan di bawah Seksyen 2 Akta Dadah Berbahaya 1952 [Akta 234] iaitu mengedar dadah jenis Syabu yang mengandungi dadah berbahaya jenis Methamphetamine seperti yang tersenarai di bawah Jadual Pertama, Bahagian III, Akta Dadah Berbahaya 1952 [Akta 234]. Pemohon terlibat di dalam **sekumpulan besar orang** dengan berperanan sebagai orang yang merekrut anggota dalam mengedar dadah jenis Syabu yang mengandungi dadah jenis Methamphetamine di sekitar Hutan Melintang, Perak. Pemohon adalah orang yang membuat perancangan dalam mengedar dadah kepada orang warga asing yang bekerja sebagai nelayan di sekitar Hutan Melintang, Perak. **Pemohon bertindak sebagai Ketua Sindiket** iaitu:

i. Pemohon adalah individu yang menentukan harga barang bagi setiap dadah yang diedar;

ii. Setiap transaksi akan diuruskan oleh Pemohon dan Pemohon kemudiannya akan menyuruh orang suruhan untuk edar dadah tersebut;

iii. setiap transaksi dikendalikan secara terus di antara Pemohon dan pelanggan-pelanggan;

iv. Pemohon memberi upah kepada ahli kumpulannya yang direkrut bagi tujuan mengedar dadah jenis Syabu yang mengandungi dadah berbahaya jenis Methamphetamine.

Jelas peranan Pemohon yang mempunyai hierarki tinggi di dalam kumpulan/sindiket menunjukkan sebagai rantaian utama kepada sekumpulan besar orang yang terlibat dalam aktiviti pengedaran dadah seperti yang diperuntukkan dalam Perkara 149 Perlembagaan Persekutuan dan Mukadimah Akta tersebut.

[17] Inquiry officer Ashwini went on to depose in paras. 15 and 16 of her affidavit (encl. 6) that from her investigations, she was satisfied that the applicant did not carry out the trafficking of dangerous drugs alone but as part of a substantial body of persons as provided under art. 149 of the Federal Constitution[9] and the Preamble to the DDSPMA[10], and that from her narration of what she has done, she had inquired into the case of the applicant and had prepared her report to be delivered to the second respondent with all convenient speed.

Observations

[18] The applicant did not reply to any of the averments of the respondents contained in the seven affidavits in reply filed by them.

[19] It is apparent that as at the time of the filing of the notice of motion on 18 July 2022, no order for the detention of the applicant has been made pursuant to s. 6(1) of the DDSPMA.

A **Applicant's Case**

[20] The applicant raised the following four issues in support of his application:

(i) non-compliance with the provisions of s. 3(1) of the DDSPMA and art. 5(2) of the Federal Constitution[11] read together with the Preamble of the DDSPMA and art. 149 of the Federal Constitution – the arrest of the applicant was not premised on any belief that "the applicant's activities" involved a "substantial body of persons";

(ii) non-compliance with the provisions of s. 3(2)(a) of the DDSPMA read together with the Preamble of the DDSPMA and art. 149 of the Federal Constitution;

(iii) non-compliance with the provisions of s. 3(2)(b) of the DDSPMA read together with the Preamble of the DDSPMA (*supra*) and art. 149 of the Federal Constitution (*supra*); and

(iv) the investigations and report submitted by the police investigating officer (IO Inspector Tie) under s. 3(3) of the DDSPMA were incomplete and are not in accordance with the requirements of the DDSPMA.

[21] The applicant's assertions can be summarised as follows:

(i) the arrest of the applicant pursuant to s. 3(1) of the DDSPMA was unlawful because at the time of his arrest, he was [not] informed by the arresting officer (ASP Sagaran) that he was being arrested because he was in association or is being involved in trafficking in dangerous drugs activities together with a substantial body of persons;

(ii) reliance is placed upon art. 5(2) of the Federal Constitution but I believe that learned counsel meant art. 5(3), but for ease of reading, the whole of Article 5 is set out because art. 5(1) and (2) are just as important:

> **5. Liberty of the person**
>
> (1) No person shall be deprived of his life or personal liberty save in accordance with law.
>
> (2) Where complaint is made to a High Court or any judge thereof that a person is being unlawfully detained the court shall inquire into the complaint and, unless satisfied that the detention is lawful, shall order him to be produced before the court and release him.
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> (3) *Where a person is arrested he shall be informed as soon as may be of the grounds of his arrest and shall be allowed to consult and be defended by a legal practitioner of his choice.* (emphasis added)

(iii) reliance is also placed on a body of case law laid down by *inter alia* the highest court of the land, namely the Supreme Court which was later re-named the Federal Court, which has consistently held that:

(a) the power of arrest and detention has to be scrupulously complied with, so as to ensure that there is no abuse of the preventive detention law, and the person arrested and detained must be so detained in accordance with the modes of arrest and detention specified, see *Lei Meng v. Inspektor Wayandiana Abdullah & Ors And Other Appeals* [2022] 3 CLJ 177 at paras. [100] and [101];

(b) if a detention is procured by steps which are not regular the court is empowered to set aside the detention order and this means that every step which is necessary for the making of the detention order is subject to review by the court, see *Muhammad Jailani Kasim v. Timbalan Menteri Keselamatan Dalam Negeri, Malaysia & Ors* [2006] 4 CLJ 687 (SC) at para [8];

(c) in matters which concern their personal liberty, the applicant is entitled to avail himself of any technical defects which may invalidate the order which deprives him of his liberty, see *Ex Parte Johannes Choeldi & Ors* [1960] 1 LNS 25; [1960] 26 MLJ 184 at 186 and cited with approval by our Supreme Court in *Ng Hong Choon v. Timbalan Menteri Hal Ehwal Dalam Negeri & Anor* [1994] 4 CLJ 47 (SC); and

(d) an arrest without information in hand would be an arrest without reason to believe and would be unlawful, see *Tee Yam v. Timbalan Menteri, Menteri Keselamatan Dalam Negeri, Malaysia & Ors* [2005] 6 CLJ 550 (HC).

(iii) when the applicant was caused to be detained beyond 24 hours pursuant to s. 3(2)(a) of the DDSPMA, Inspector Vijay a/l Kumar who authorised the detention did not make any averment that it was done for purposes of investigating the applicant for having associated or is being involved in trafficking in dangerous drugs activities together with a substantial body of persons;

(iv) similarly, when the applicant was caused to be detained by ASP V Sagaran for a period for more than 48 hours pursuant to s. 3(2)(b) of the DDSPMA there was no averment that it was done for purposes of investigating the applicant for having associated or is being involved in trafficking in dangerous drugs activities together with a substantial body of persons; and

(v) the report by IO Inspector Tie was clearly incomplete as there were material witnesses who could not be found for purposes of obtaining their material statements, and therefore such a report could not factually conclude that there was trafficking of dangerous drugs involving a substantial body of persons.

[22] Reliance was placed by the applicant on the case of *Muhamad Bilal Salim v. Ketua Polis Negara, Malaysia & Anor* [2022] 1 LNS 1315; [2022] MLJU 1283 where at paras. [26] to [28] Justice Roz Mawar Rozain JC held that:

> [26] This court finds that in authorising a further detention of more than 48 hours under s. 3(2)(b) of the Act, the Assistant Superintendent of Police did not address his mind whether a longer detention period is needed to wrap up investigation concerning the accused's drug trafficking activities in connection with a substantial body of persons. His affidavit is silent on this matter (Enclosure 8). Likewise, with the affidavit of the investigating officer upon whose work and recommendation he had relied on – no mention of any involvement by a substantial body of persons (encl. 12).
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> [27] To this court's mind, taking together art. 149 FC, and the preamble of the Act, there seem to be non-compliance of s. 3(2)(b) of the Act as the only point that is evident from the affidavits for the purpose of detaining the applicant more than 48 hours is an investigation into drug trafficking activities. It was not for the purpose of the Act which is for preventive detention of persons involved in drug trafficking activities in connection with a substantial body of persons which are prejudicial to public order.
>
> *[28] This Court rules that the mandatory requirement decided by the Federal Court as to the 'substantial body of persons' applies or culminates from the onset, which is from the point of arrest, through the detention during investigation and to the decision of detention. This must be one set standard applicable throughout when the Act is invoked.* (emphasis added)

[23] The court was informed that there was no appeal against the decision of *Muhamad Bilal Salim* (*supra*).

Respondents' Case

[24] The respondents have grouped the first three of the four issues raised by the applicant into one, on the premise that they are inter-related (encl. 16 para. [4]), and that the three stages in s. 3 of the DDSPMA namely that of: (i) section 3(1) regulates the day of the arrest, (ii) section 3(2)(a) regulates the power to detain for more than 24 hours from the time of the arrest, and (iii) section 3(2)(b) regulates the power to detain for than 48 hours from the time of arrest.

[25] Learned Federal Counsel asserted that s. 3 is for the sole purpose of investigation and the need to prove the element of "substantial body of persons" pursuant to the Preamble of the DDSPMA is premature.

[26] IO Inspector Tie in his affidavit (encl. 7) explained that three days after the arrest of the applicant (on 23 June 2022), he had recorded the applicant's statement and it was only on 28 June 2022 that the first statement (was) taken from the first witness and this supports the respondents' assertion that investigations were ongoing.

[27] Further, after realising on 1 July 2022, which is nine days after the arrest (on 23 June 2022), that investigations could not be completed within 14 days, IO Inspector Tie requested for an extension of time for purposes of investigating the two elements of:

(i) the applicant's involvement with the activity of trafficking in dangerous drugs; and

(ii) the applicant's association with a substantial body of persons.

[28] It was only after investigations were carried out that these two elements were satisfied, see the affidavit of ACP Shahidi (encl. 5 para. 6) and the affidavit of IO Inspector Tie (encl. 7 para. 13).

[29] As for the fourth issue raised by the applicant that the report of IO Inspector Tie is incomplete, and not made in accordance with the requirements of (s. 3(3)) of the DDSPMA, the respondents assert that it is baseless and made *mala fide* because IO Inspector Tie had in his report made findings that the applicant was involved with a substantial body of persons in the trafficking of drugs as can be seen his affidavit (encl. 7 para. 13).

[30] Further, there is no such requirement housed within s. 3(2)(a) and (b) of the DDSPMA for all material witnesses to be first found and statements taken. Reliance is placed upon the case of *Lee Kew Sang v. Timbalan Menteri Dalam Negeri, Malaysia & Ors* [2005] 3 CLJ 914 where the Federal Court held that:

> It is not for the courts to create procedural requirements because it is not the function of the courts to make laws or rules. If there is no such procedural requirement then there cannot be non-compliance thereof.

[31] The learned Federal Counsel, Mr. Nuur Izham bin Ismail brought to the court's attention the case of *Muhammad Hafiz Abd Halim v. Ketua Polis Negara, Malaysia & Anor* [2022] 1 LNS 1542 (HC) where Justice Roz Mawar Rozain JC in a similar application for a writ of *habeas corpus* which challenged the validity of the arrest made under s. 3(1) of the DDSPMA accepted that an arrest premised upon a belief by the arresting officer that the applicant had been involved in an activity in association with or in the trafficking of dangerous drugs do not show any transgression of s. 3(1) of the DDSPMA (see para. [11] of the judgment). In other words, with respect, by necessary implication, Her Ladyship accepted that the omission of any mention that the applicant had been involved in the trafficking of dangerous drugs with a substantial body of persons did not render the arrest unlawful. Her Ladyship went further at para. [15] to similarly hold that:

A As the investigation under section 3(1) of the Act is for detention under s. 6(1) of the Act, this Court accepts that at this early point after arrest, the detention is for the investigation of drug trafficking activities involving substantial body of persons as required for an order under section 6(1) of the Act. So, the detention under section 3(2)(a) of the Act is regular.

B **[32]** Nevertheless, the application for a writ of habeas corpus was granted in *Muhammad Hafiz Abd Halim* (*supra*) because the High Court held there was inordinate delay by the Inquiry Officer in conducting the requisite inquiry under s. 5(4) of the DDSPMA (see paras. [23] to [33] and [39] of the judgment.

C **[33]** Reliance is also made by the respondents on the case of *Kantha Rao Subramaniam lwn. Ketua Polis Negara, Malaysia & Satu Lagi* [2022] 1 LNS 1898 (HC) where Justice Hasbullah Adam JC held that the statement of "with a substantial body of persons" is one that is necessary only in the detention order issued pursuant to s. 6(1) of the DDSPMA and said:

D [40] *Oleh yang demikian, Mahkamah ini mendapati bahawa adalah pra-matang di peringkat tangkapan di bawah seksyen 3(1) dan penahanan di bawah seksyen 3(2) Akta tersebut untuk menentukan sama ada Pemohon adalah sebahagian 'sekumpulan besar orang' yang terlibat dengan aktiviti pengedaran dadah berbahaya menurut keperluan di bawah Perkara 149 Perlembagaan Persekutuan dan Mukadimah Akta tersebut.*

E [41] *Justeru, adalah dapatan Mahkamah ini bahawa isu kegagalan membuktikan bahawa penangkapan Pemohon melibatkan sekumpulan besar orang (substantial body of persons) dengan aktiviti pengedaran dadah adalah tidak mempunyai merit.*
(emphasis added)

F **[34]** Nevertheless, the applicant in *Kantha Rao Subramaniam* (*supra*) succeeded in his application for a writ of *habeas corpus* on the ground that he was [not] detained in a place authorised generally or specifically by the Minister pursuant to s. 3(4)[12] of the DDSPMA.

[35] The respondents asserted that the applicant's submissions that the G failure by IO Inspector Tie to find other material witnesses would lead to an inference to be drawn in favour of the applicant that there was no evidence that could verify the applicant's involvement with a substantial body of persons in the trafficking of drugs is untrue. In fact, the report of inquiry officer Ashwini's supports the findings of IO Inspector Tie that the applicant H is involved in the trafficking of drugs with a substantial body of persons.

[36] It was also brought to the court's attention by Mr. Nuur Izham bin Ismail that the Minister of Home Affairs has appealed against the decisions in both *Muhammad Hafiz Abd Halim* (*supra*) and *Kantha Rao Subramaniam* (*supra*) to the Federal Court.

I

Court's Analysis And Findings

[37] By reason of the applicant having had his liberty restrained pursuant to the powers provided under the DDSPMA, a statute which has been interpreted by the Federal Court in *Selva Vinayagam Sures v. Timbalan Menteri Dalam Negeri, Malaysia & Ors* [2021] 2 CLJ 29; [2021] 1 MLJ 601; [2021] 1 MLRA 83, it is only logical that the starting point for this court is to refer to this Federal Court authority.

[38] I am grateful to the learned editor of the esteemed law publisher CLJ (www.cljlaw.com), for her abstract which summarises neatly the *ratio decidendi* of the apex court.

[39] The abstract reads as follows:

> The Dangerous Drugs (Special Preventive Measures) Act 1985, otherwise Act 316, is a special specie of enactment on preventive detention enacted pursuant to art 149 of the Federal Constitution (FC) under which the fundamental liberties prescribed under arts. 5, 9, 10 and 13 of the FC may be circumscribed. This said, in interpreting the Executive's power of detention under *s. 6(1) of Act 316, the long title and preamble to the Act ought to be properly construed and given effect to as part of the Act. The construction must further have regard to ss. 15 and 17A of the Interpretation Acts 1948/1967, the underlying object of the Act and the principle that any safeguard that the law provides for such detention must be liberally interpreted.*
>
> *Bearing all these in mind, and notwithstanding that the words "a substantial body of persons" appearing in the preamble of Act 316 can nowhere be found in s. 6(1), the object of Act 316 should be read into s. 6(1) in order to give the sub-section the meaning intended by Parliament. It follows, hence, that the power under s. 6(1) may only be exercised if the following ingredients are set out in the grounds of the detention order and allegations of fact, namely, that: (i) the activity which has been taken or is being threatened by a substantial body of persons relates to or involves trafficking in dangerous drugs; (ii) the detenu is a member of a substantial body of persons; and (iii) the Minister is satisfied that it is necessary in the interest of public order that the detenu be subject to preventive detention. Be that as it may, since the detenu herein was acting alone, he cannot be caught by the ambit of Act 316. The detention order being a nullity, a writ of habeas corpus ought to issue to forthwith set the detenu at liberty.* (emphasis added)

[40] In line with the decision of the Federal Court in *Selva Vinayagam Sures* (*supra*), and with due respect to the contrary views expressed in *Muhammad Hafiz Abd Halim* (*supra*), *Kantha Rao Subramaniam* (*supra*) and to a limited extent, the finding of the High Court in *Muhamad Bilal Salim* (*supra*) at para. [19] of the judgment, the object of the DDSPMA should be read into s. 3 in order to give this section the meaning intended by Parliament. See also s. 17A of the Interpretation Acts 1948 And 1967.

[41] In my considered view, it logically follows that for purposes of ss. 3(1), 3(2)(a) and (b) of the DDSPMA, in any arrest and subsequent detention, two of the three key ingredients identified and held by the Federal Court in *Selva Vinayagam Sures* (*supra*), namely that:

(i) the activity which has been taken or is being threatened by a substantial body of persons relating to or involving trafficking in dangerous drugs, and

(ii) the suspect is a member of a substantial body of persons.

form part of the object of the DDSPMA and should be read into s. 3 of the DDSPMA in order to give it the meaning intended by Parliament.

[42] I find further support for such a construction by making reference to the minority decision of the Right Honourable Chief Justice, Tengku Maimun binti Tuan Mat, who after making reference to *Mohamad Ezam Mohd Noor v. Ketua Polis Negara & Other Appeals* [2002] 4 CLJ 309 (FC), said in *Zaidi Kanapiah v. ASP Khairul Fairoz Rodzuan & Ors And Other Appeals* [2021] 5 CLJ 581 at para. [215] that:

> **... the legality of a detention or detentions must be viewed as a single overarching transaction.** (emphasis added)

[43] This approach was approved unanimously by the Federal Court in its later decision in *Lei Meng v. Inspektor Wayandiana Abdullah & Ors And Other Appeals* [2022] 3 CLJ 177 and I would venture to add that it cannot be gainsaid that the detention of the applicant begins from the moment of him being arrested pursuant to s. 3(1) of the DDSPMA, see also *Dhinesh Tanaphll v. Lembaga Pencegahan Jenayah & Ors* [2022] 5 CLJ 1 (FC) where Justice Nallini Pathmanathan FCJ in dealing with the Prevention of Crime Act 1959 said:

> [12] **It is untenable to utilise the extreme measures set out in legislation enacted pursuant to art. 149 FC,** to deal with criminal offences which are more properly dealt with under the Penal Code, and other relevant legislation. It is incorrect to turn to emergency legislation to deal with ordinary criminal offences **in order to procure further evidence,** or because there is insufficient evidence to prosecute a person under the relevant criminal legislation dealing with that particular crime. (emphasis added)

[44] In the instant case, as pointed out by learned counsel for the applicant, the applicant could have been dealt with under the Dangerous Drugs Act 1952.

[45] Justice Vernon Ong who gave a concurring speech for the majority in *Zaidi Kanapiah* (*supra*) said at para. [139] on the power of arrest provided by s. 3(1) of the Prevention of Crime Act 1959 ("POCA") Act 297[13] ... which is substantially similar to s. 3(1) of the DDSPMA that:

> … This is important because the discretion of the police to arrest and to detain pursuant to a remand order is not absolute. *Put another way, the decision of a police officer, namely, whether he has the prerequisite 'grounds for believing' under an application for remand is objectively justiciable.*
>
> …
>
> *That the police diary discloses sufficient facts and particulars to support the arresting officer's belief that 'grounds exist which would justify the holding of an inquiry into the case of the person arrested' under sub-s. 3(1) POCA.* The ground should also corroborate the belief that the person is a member of any of the registrable categories under Part 1 of the First Schedule of POCA …
>
> (emphasis added)

[46] In the instant case, from the narrative distilled from the affidavits filed and set out above, the arrest made under s. 3(1) of the DDSPMA followed by the subsequent detention of more than 24 hours pursuant to s. 3(2)(a) of the DDSPMA, and the further detention of more than 48 hours pursuant to s. 3(2)(b) of the DDSPMA, were all carried out without any evidence laid before this court that the applicant was arrested and detained by reason of he having associated or is being involved in trafficking in dangerous drugs activities together with a substantial body of persons.

[47] The first time, the element of the applicant having associated or is being involved in trafficking in dangerous drugs activities together with a substantial body of persons surfaced only at the stage when the applicant was detained for a further 14 days pursuant to s. 3(2)(c) of the DDSPMA, see the affidavit of ACP Shahidi (encl. 5 para. 7).

[48] In my considered opinion, the structure of the legal detentive power in s. 3 of the DDSPMA is expressed to be sequential in nature.

[49] It starts with the power given to any police officer of or above the rank of Inspector, without warrant, to arrest and detain followed by the legal power to incrementally increase the period of detention being vested upon a correspondingly higher rank of police officer.

[50] Only a police officer of or above the rank of Inspector can detain the suspect for more than 24 hours, see s. 3(2)(a) of the DDSPMA.

[51] This is followed by only a police officer of or above the rank of Assistant Superintendent of Police who has the authority to have the suspect detained for more than 48 hours, see s. 3(2)(b) of the DDSPMA.

[52] Thereafter, the suspect shall not be detained for more than 14 days unless a police officer of or above the rank of Deputy Superintendent has reported the circumstances of arrest and detention to the Inspector General of Police ("IGP") or to a police officer designated by the IGP who shall forthwith report the same to the Minister, see s. 3(2)(c) of the DDSPMA.

[53] The inference to be drawn from the provisions of s. 3 of the DDSPMA is clear. Parliament acknowledges the drastic power given to restrict the liberty of a subject without having to bring him to a court and has put in place safeguards by expressly providing that this power or arrest is placed in the hands of a police officer with the rank of at least that of an inspector, and authority for each incremental period of detention having to be sought from a correspondingly higher authority up till that of the Minister.

[54] Each sequential progression must be scrupulously complied with by those entrusted with such power and the exercise of this power within the framework of the preventive detention laws housed within the DDSPMA is objectively justiciable.

[55] In the instant case, whilst the element of having associated or is being involved in trafficking in dangerous drugs activities together with a substantial body of persons is present for the applicant's further detention for a further 14 days pursuant to s. 3(2)(c) of the DDSPMA as can be seen in the affidavit of ACP Shahidi (encl. 5 para. 7), however, this element for purposes of his arrest, as well as his subsequent detention for more than 24 hours, followed by a further 48 hours was noticeably absent. It follows that his arrest and his subsequent detention is unlawful.

[56] There is, therefore, merit in his application for a writ of *habeas corpus* to be issued in his favour.

[57] For the reasons I have set out above, with respect, I find it unnecessary to refer to the other authorities that learned counsel for the applicant has referred to.

Conclusion

[58] Wherefore, I granted an order in terms of prayer 1 and as for prayer 2, I granted an order for part of the relief sought namely that a writ of *habeas corpus* be issued for the applicant to be released forthwith.

[59] As for the further relief sought in prayer 2 for an order that the applicant is not to be arrested once he is released, I had sought for clarification because no submissions were filed on this relief sought. Learned counsel for the applicant then addressed the court and said that he is withdrawing this part of the relief sought and for the avoidance of any doubt, this court with the agreement of counsel for the applicant had dismissed this part of the prayer and relief sought.

Endnotes:

1. (1) Any police officer may, without warrant, arrest and detain, for the purpose of investigation, any person in respect of whom he has reason to believe there are grounds which could justify his detention under sub-s. 6(1).

2. (1) Whenever the Minister, after considering:

(a) the complete report of investigation submitted under subsection 3(3); and

(b) the report of the Inquiry Officer submitted under subsection 5(4),

is satisfied with respect to any person that such person has been or is associated with any activity relating to or involving the trafficking in dangerous drugs, the Minister may, if he is satisfied that it is necessary in the interest of public order that such person be detained, by order (hereinafter referred to as a "detention order") direct that such person be detained for a period not exceeding two years.

3. (2) Any person arrested and detained under this section may be detained in police custody for a period not exceeding sixty days without an order of detention having been made in respect of him under subsection 6(1):

Provided that:

(a) he shall not be detained for more than twenty-four hours except with the authority of a police officer of or above the rank of Inspector;

4. (b) he shall not be detained for more than forty-eight hours except with the authority of a police officer of or above the rank of Assistant Superintendent of Police;

5. (3) The police officer making an investigation pertaining to a person arrested and detained under this section shall cause a copy of the complete report of the investigation to be submitted:

(a) to an Inquiry Officer appointed under subsection 5(1); and

(b) to the Minister,

within such period as may be prescribed by the Minister by regulations made under this Act.

6. In this Act, unless the context otherwise requires:

"dangerous drug" means any drug or substance which is for the time being comprised in the First Schedule;

7. (c) he shall not be detained for more than fourteen days unless a police officer of or above the rank of Deputy Superintendent has reported the circumstances of the arrest and detention to the Inspector General or to a police officer designated by the Inspector General in that behalf and the Inspector General or police officer so designated by him, as the case may be, shall forthwith report the same to the Minister.

8. (4) An Inquiry Officer shall submit his report in writing to the Minister within such period as may be prescribed by the Minister by regulations made under this Act.

9. (1) If an Act of Parliament recites that action has been taken or threatened by any substantial body of persons, whether inside or outside the Federation:

A (a) to cause, or to cause a substantial number of citizens to fear, organized violence against persons or property; or

(b) to excite disaffection against the Yang di-Pertuan Agong or any Government in the Federation; or

B (c) to promote feelings of ill-will and hostility between different races or other classes of the population likely to cause violence; or

(d) to procure the alteration, otherwise than by lawful means, of anything by law established; or

C (e) which is prejudicial to the maintenance or the functioning of any supply or service to the public or any class of the public in the Federation or any part thereof; or

(f) which is prejudicial to public order in, or the security of, the Federation or any part thereof,

D any provision of that law designed to stop or prevent that action is valid notwithstanding that it is inconsistent with any of the provisions of Article 5, 9, 10 or 13, or would apart from this Article be outside the legislative power of Parliament; and Article 79 shall not apply to a Bill for such an Act or any amendment to such a Bill.

E (2) A law containing such a recital as is mentioned in Clause (1) shall, if not sooner repealed, cease to have effect if resolutions are passed by both Houses of Parliament annulling such law, but without prejudice to anything previously done by virtue thereof or to the power of Parliament to make a new law under this Article.

NOTES:

F **Part XI:**

The heading "Special Powers Against Subversion, Organized Violence, And Acts And Crimes Prejudicial To The Public, And Emergency Power" substituted for "Special Powers Against Subversion, And Emergency Powers" by Act A442, section 5, in force 31-12-1978.

G **Art. 149:**

1. The present Article was inserted by Act 10/1960, paragraphs 28(a) and (b), in force from 31-05-1960, and replaced the original Article which read as follows:

H 149. (1) If an Act of Parliament recites that action has been taken or threatened by any substantial body of persons, whether inside or outside the Federation, to cause, or to cause a substantial number of citizens to fear, organized violence against persons or property, any provision of that law designed to stop or prevent that action is valid notwithstanding that it is inconsistent with any of the provisions of Article 5, 9, or 10, or would apart from this Article be

I outside the legislative power of Parliament; and Article 79 shall not apply to a Bill for such an Act or any amendment to such a Bill.

(2) A law containing such a recital as is mentioned in Clause (1) shall if not sooner repealed, cease to have effect on the expiration of a period of one year from the date on which it comes into operation, without prejudice to the power of Parliament to make a new law under this Article.

10. Tajuk Panjang & Mukadimah

Suatu Akta bagi membuat peruntukan mengenai tahanan pencegahan orang yang ada kaitan dengan apa-apa aktiviti yang berhubungan dengan atau yang melibatkan pengedaran dadah berbahaya.

BAHAWASANYA tindakan yang memudaratkan ketenteraman awam di Malaysia telah diambil dan tindakan selanjutnya yang serupa diancam oleh sekumpulan besar orang di dalam dan di luar Malaysia;

DAN BAHAWASANYA Parlimen berpendapat adalah perlu tindakan itu dihentikan;

MAKA, OLEH HAL YANG DEMIKIAN, menurut Perkara 149 Perlembagaan MAKA INILAH DIPERBUAT UNDANG-UNDANG oleh Seri Paduka Baginda Yang di-Pertuan Agong dengan nasihat dan persetujuan Dewan Negara dan Dewan Rakyat yang bersidang dalam Parlimen, dan dengan kuasa daripadanya, seperti yang berikut:

11. (2) Where complaint is made to a High Court or any judge thereof that a person is being unlawfully detained the court shall inquire into the complaint and, unless satisfied that the detention is lawful, shall order him to be produced before the court and release him.

12. (4) Any person detained under the powers conferred by this section shall be deemed to be in lawful custody, and may be detained in any prison, or in any police station, or in any other place authorized generally or specially by the Minister.

13. (1) A police officer may without a warrant arrest any person if he has reason to believe that grounds exist which would justify the holding of an inquiry into the case of that person under this act.